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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DEBORAH VAIL,

Respondent,

v.

PAUL PURSEHOUSE,

Appellant.

D056101

(Super. Ct. No. DVN15604)

APPEAL from an order of the Superior Court of San Diego County, Adrienne A. Orfield, Judge. Affirmed.

Paul Pursehouse appeals from an injunction requiring him to stay away from and cease contacting and harassing his ex-fiancée Deborah Vail for a period of three years. As we will explain, Pursehouse's appeal lacks merit, as it relies on the standards for issuing an injunction under Code of Civil Procedure section 527.6 instead of the standards applicable to a restraining order issued under the Domestic Violence

Prevention Act (Fam. Code, § 6200 et seq.) (DVPA),¹ and the DVPA applies here.

Accordingly, we affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

On August 21, 2009, Vail filed an application for a restraining order to stop harassment by her ex-fiancé and former cohabitant Pursehouse. According to the forms used for the application, Vail filed it pursuant to the DVPA. Vail's declaration in support of the application stated:

"For the past eight weeks, Paul has been harassing me by phone, by email, in person, and through my friends. I live in a gated senior community, and he has been showing up to about three of my community events per week for the past few weeks, in an attempt to see me and talk to me. I have told him repeatedly that we are over and that I want nothing to do with him, yet he refuses to leave me alone, and his harassment and obsession with me seems to be escalating.

"During July 2009, Paul was emailing practically every day, even though I had told him to leave me alone (see Exhibit 1). I finally threatened to get a restraining order against him in the end of July and he sent me an email stating, 'You do not have to put a restraining order on me Debi. I will never bother you again (see Exhibit 2).' Since clearly stating that he would 'never bother [me] again,' I have already received two letters in the mail from him dated August 4th and August 10th (see Exhibits 3 and 4), demonstrating that he has no intentions of leaving me alone. I have also gotten countless hang up calls, that I believe is Paul calling to harass me. Additionally, Paul is harassing my friends, including my friend Joanne, who sent me a warning email stating that she has repeatedly tried to tell him to leave me alone and remind him that things are over. She wrote that he could not stop talking about me and keeps hoping that there is a future for us and refuses to take no for an answer. She also warned me that 'he is absolutely obsessed,' with me which is an accurate assessment of what is going on (see Exhibit 5).

¹ Unless otherwise indicated, all further statutory references are to the Family Code.

"Paul has been told repeatedly . . . by me and numerous of my friends that I want nothing to do with him. He continues to harass me both directly and indirectly and I am sick and tired of it. I need this restraining order so that Paul Pursehouse is ordered to stop contacting me and stay away from me and my home so this harassment will finally end."

As indicated in Vail's declaration, the application contained exhibits including (1) Vail's e-mail inbox from June 12, 2009, to August 11, 2009, showing 22 e-mails from Pursehouse; and (2) letters that Pursehouse sent to Vail after he told her in a July 29, 2009 e-mail that a restraining order was unnecessary because he "will never bother" her again.

A temporary restraining order was issued. Pursehouse then filed an answer to the application, in which he submitted evidence including (1) an e-mail from Vail to him on July 8, 2009, thanking him for flowers and a card he sent her; and (2) a brief e-mail exchange between him and Vail on July 18, 2009, about a lottery ticket.

At the hearing on the restraining order, Vail explained that Pursehouse had recently asked her friend to deliver a poem to Vail on his behalf. Pursehouse admitted at the hearing that he had been continually pursuing Vail, but he claimed he didn't realize that sending e-mail was a form of harassment.

The trial court issued a restraining order prohibiting Pursehouse from, among other things, contacting or harassing Vail for a period of three years.

II

DISCUSSION

Pursehouse appeals from the restraining order, arguing that the evidence before the trial court did not support a finding, as required by Code of Civil Procedure section 527.6, that Vail suffered substantial emotional distress or that a reasonable person would have suffered substantial emotional distress as a result of Pursehouse's conduct.

Pursehouse's argument lacks merit because it is based on an inapplicable statute. The restraining order in this case was issued pursuant to the DVPA, not Code of Civil Procedure section 527.6.

Under the DVPA, a court may issue an order restraining a person "for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300.) For purposes of the DVPA, "[d]omestic violence" means "abuse" perpetrated against certain persons, including — as applicable here — a "person with whom the respondent is having or has had a dating or engagement relationship" and "a former cohabitant." (§ 6211, subds. (a)-(c).) The DVPA defines "'abuse' [as] any of the following: [¶] (a) Intentionally or recklessly to cause or attempt to cause bodily injury. [¶] (b) Sexual assault. [¶] (c) To place a person in reasonable apprehension of imminent serious bodily injury to that person or to another. [Or] (d) *To engage in any behavior that has been or could be enjoined pursuant to Section 6320.*" (§ 6203, italics added.) Section 6320 in turn provides: "The court may issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually

assaulting, battering, *harassing, telephoning*, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, *contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of*, or disturbing the peace of the other party" (*Id.*, subd. (a), italics added.) Under these statutory definitions, "the requisite abuse need not be actual infliction of physical injury or assault." (*Conness v. Satram* (2004) 122 Cal.App.4th 197, 202.)

Here, the trial court properly issued an injunction under the DVPA because (1) Pursehouse was a former fiancé and cohabitant of Vail; and (2) Vail's declaration established numerous instances of "abuse" by Pursehouse, as defined in the DVPA (§§ 6203, 6320), in the form of multiple unwanted e-mails, letters, telephone calls and personal encounters with him.

Contrary to Pursehouse's argument, the DVPA contains no requirement that the person seeking protection suffered substantial emotional distress or that a reasonable person would have done so. Pursehouse erroneously draws that requirement from Code of Civil Procedure section 527.6 under the misguided assumption that the injunction here was issued under that provision. As Pursehouse points out, Code of Civil Procedure section 527.6 provides for the issuance of an injunction "prohibiting harassment" (*id.*, subd. (a)), and defines harassment as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose" (*id.*, subd. (b)) and "must be such as would cause a reasonable person to suffer substantial

emotional distress, and must actually cause substantial emotional distress to the plaintiff" (*ibid.*). However, as we have explained, the injunction here was issued pursuant to the DVPA, as indicated by the application form that Vail submitted, not pursuant to Code of Civil Procedure section 527.6. The requirements of Code of Civil Procedure section 527.6 are accordingly not applicable.

We conclude that Pursehouse's appeal is without merit.

DISPOSITION

The trial court's order granting the restraining order is affirmed.

IRION, J.

WE CONCUR:

O'ROURKE, Acting P. J.

AARON, J.